

# EXHIBIT B

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1 representing you today?

2 A. I do.

3 Q. Is that Mr. Nichols?

4 A. Yes, sir.

5 Q. This is a continuation of the deposition that  
6 we took on March 22nd of 2021. I'm not going to be  
7 repeating the areas that we covered then except insofar  
8 as it's necessary to establish context around the  
9 questions that I'm going to be asking you today.

10 Do you understand that?

11 A. Yes.

12 Q. All of my questions today will be in your  
13 representative capacity on behalf of the Harris County  
14 District Attorney's Office pursuant to Rule of Civil  
15 Procedure 30(b)(6) unless otherwise specified.

16 Do you understand?

17 A. Yes.

18 Q. And for all the questions that I ask, just like  
19 last time, unless I say otherwise, the time period I'm  
20 asking about is January 1st, 2015, through the present.

21 Do you understand that?

22 A. Yes.

23 MR. NICHOLS: Objection. Yeah, objection,  
24 form. And we, just for the record, Eric Nichols, we  
25 have our objections to the form of the organizational

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1 trained initially by me as well as observing other  
2 prosecutors on the day shift for two weeks. There will  
3 also -- if there are changes to the law or procedure,  
4 then there will be trainings relative to those  
5 particular topics, as I stated earlier, such as the bail  
6 reform laws that recently went into effect in December  
7 and January and just as needed to address any particular  
8 issues with process, procedure and substance as they  
9 arise.

10 Q. (By Mr. Stein) All right. I'm going to ask  
11 you some questions about whether the actions you took in  
12 Ka'Darian Smith's case were consistent with the District  
13 Attorney's Office's policies regarding communications  
14 with judges and bond requests.

15 Now, in Mr. Smith's case, you were the ADA  
16 present at the 15.17 hearing, correct?

17 MR. NICHOLS: Jeff, so you've mentioned  
18 earlier as part of your long prologue in asking a bunch  
19 of understandings about the deposition that you were  
20 going to be covering matters that relate to the DA's  
21 Office generally in her organizational capacity. Am I  
22 now hearing that you want to ask questions specifically  
23 about a particular case in her individual capacity?

24 MR. STEIN: Mr. Nichols, we've already  
25 litigated whether we get to inquire about whether the

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1 conduct in that case was consistent with the official  
2 policies. Ms. Keith's position as an organizational  
3 representative is perfectly appropriate to answer  
4 questions about that topic.

5 MR. NICHOLS: Yeah. And, Jeff, I politely  
6 and respectfully disagree with your characterization as  
7 to what was "litigated."

8 My recollection is that there was some  
9 discussion about talking about, in general, about the  
10 policies that the DA's Office has with respect to  
11 ex parte communications with judges.

12 I don't recall any litigation, much less  
13 ruling, that said that it would be appropriate to go  
14 into the facts and circumstances of a particular case.

15 MR. STEIN: I'm just going to pull up --  
16 it's one of like the three points that we raised before  
17 Judge Rosenthal. And specifically, it was whether Ms.  
18 Keith's alerting of prosecutors in Judge Randy Roll's  
19 courtroom about a hearing officer's imposition of a  
20 personal bond in an aggravated assault case was  
21 consistent with HCDAO policies regarding communications  
22 with judges and bond requests.

23 MR. NICHOLS: Yes.

24 MR. STEIN: You raised it before Judge  
25 Rosenthal. I explained the relevance of that line of

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1 questioning. Judge Rosenthal agreed that we are  
2 permitted to reopen on that, and so...

3 MR. NICHOLS: Respectfully, I think the  
4 discussion before Judge Rosenthal, which was in the  
5 context of a premotion conference, related to the  
6 policies that the DA's Office has with respect to  
7 ex parte communications.

8 So I just want to make sure it's clear on  
9 the record that now you're not asking for her to testify  
10 about that subject, you're asking her to testify about  
11 an individual case in which she individually was  
12 involved?

13 MR. STEIN: I'm asking her about a case  
14 because it bears on the policies. My questions are  
15 about whether the conduct there was consistent with the  
16 policies.

17 MR. NICHOLS: All I want to make sure to  
18 get clear, Jeff, the record that you're now asking for  
19 -- I'm not saying I'm not going to let her testify to  
20 it. The record that you're asking about is her  
21 individual perception of a particular case as opposed to  
22 general Harris County District Attorney's Office  
23 policies? And if you just help us out by that,  
24 especially in light of your comment at the beginning  
25 that said you were only going to talk about things in

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1 her capacity as an organizational representative, I  
2 think that'll help move things along.

3 MR. STEIN: In the interest of moving  
4 things along and as a good faith agreement, I'll agree  
5 to ask in your individual capacity with the  
6 understanding that then we will be able to move through  
7 this relatively smoothly, not have to argue about  
8 whether it's properly within the scope so that everyone  
9 can go home hopefully very soon.

10 MR. NICHOLS: All right. Could you ask  
11 your question again, please.

12 Q. (By Mr. Stein) In Mr. Smith's case, you were  
13 the ADA present at the 15.17 hearing, correct?

14 MR. NICHOLS: Objection, form, and beyond  
15 the scope.

16 Ms. Keith, you can answer.

17 A. Yes, I was.

18 Q. (By Mr. Stein) And in that case, you asked the  
19 hearing officer to impose a \$30,000 secured bond?

20 MR. NICHOLS: Objection to form and beyond  
21 the scope.

22 Ms. Keith, you can answer.

23 A. I believe that's what I asked for, yes.

24 Q. (By Mr. Stein) I'm going to throw Exhibit 11  
25 into the chat, going to put it up on the screen share so

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1 we can all look at it.

2 (Exhibit 11 marked.)

3 Q. (By Mr. Stein) All right. And I'm going to  
4 fast forward to time stamp 26:09.

5 Now, this is a video of that 15.17  
6 hearing; is that correct?

7 A. It appears to be, yes.

8 Q. And beginning at time stamp 26:09, I'm going to  
9 press play. Let me know if you have trouble hearing.

10 (Video played.)

11 Q. (By Mr. Stein) And I'm stopping at time stamp  
12 26:20.

13 Were you able to hear the hearing officer  
14 say, "I will approve you for a personal bond"?

15 A. Yes.

16 Q. Now, following a later unrelated 15.17 hearing  
17 of that same docket, you came back to address the  
18 hearing officer in Mr. Smith's case, correct?

19 A. Yes.

20 Q. I'm going to fast forward to 31:08. And I'm  
21 going to play it for you now.

22 (Video played.)

23 Q. (By Mr. Stein) And I'm stopping at 31:45.

24 Were you able to hear that clip?

25 A. Yes.

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1 Q. Who was the prosecutor in Judge Roll's  
2 courtroom that you contacted?

3 MR. NICHOLS: Objection, form.

4 A. Allen Otto was the chief in the court.

5 MR. NICHOLS: Yeah, I'm just objecting to  
6 form and beyond the scope; but let's just move through  
7 this.

8 Q. (By Mr. Stein) How did you contact the  
9 prosecutor in Judge Randy Roll's courtroom?

10 MR. NICHOLS: Objection to form, beyond  
11 the scope.

12 A. I believe it was by email.

13 Q. (By Mr. Stein) And what did you tell the  
14 prosecutor to relay to Judge Randy Roll?

15 MR. NICHOLS: Objection to form and beyond  
16 the scope.

17 A. I did not tell the prosecutor to relay any  
18 information to Judge Roll.

19 Q. (By Mr. Stein) What did you tell the  
20 prosecutor in Judge Randy Roll's courtroom?

21 MR. NICHOLS: Objection, form, and beyond  
22 the scope.

23 A. I advised him of the ruling made during the  
24 15.17 hearing as I had prior knowledge from prior cases  
25 of Judge Roll's supposed policy regarding aggravated



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1 offenses. So I simply advised him of the outcome of the  
2 15.17 hearing for that particular defendant.

3 Q. (By Mr. Stein) Did you advise other  
4 prosecutors in other courtrooms that day of outcomes in  
5 the 15.17 hearing over email as you did in this case?

6 MR. NICHOLS: Objection, form, and beyond  
7 the scope.

8 A. I may have. I don't have any independent  
9 recollection of whether I did or this particular day.  
10 But it is not an uncommon occurrence for the hearing  
11 court prosecutor to notify the trial court prosecutors  
12 of bail hearing outcomes for defendants pending -- with  
13 cases pending in their courts for a variety of reasons.

14 Q. (By Mr. Stein) When the hearing officers issue  
15 a bail ruling in a particular case at the 15.17 hearing,  
16 do you record that ruling in the case file or otherwise  
17 memorialize it as part of the case file?

18 MR. NICHOLS: Now, I think he's back in  
19 the mode of asking an organizational representative  
20 question.

21 MR. STEIN: That's correct.

22 A. Yes, we make internal -- we record it  
23 internally; and it is also memorialized in the  
24 documentation that is generated by the hearing officers  
25 at the conclusion of each bail hearing.

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1 Did you announce to the hearing  
2 officer that you would ask prosecutors before  
3 the District Court judge to contact that  
4 District Court judge about this case?

5 A. Not exactly.

6 Q. What did you ask?

7 A. I had prior knowledge that the  
8 District Court judge -- of his position on  
9 Personal Bonds on aggravated offenses, and  
10 advised the hearing officer of that, primarily  
11 from the standpoint of --

12 MR. NICHOLS: And, Ms. Keith, I  
13 don't want you getting into your work  
14 thought process or whatever.

15 Just tell him what you can recall  
16 about what you said to the hearing  
17 officer in that matter.

18 THE WITNESS: I advised the hearing  
19 officer of the -- my knowledge of the  
20 District Court judge's stance on  
21 aggravated offenses, and that I did  
22 advise the court prosecutors of the  
23 outcome of the 15.17 Hearing, which we  
24 do often.

25 Q. (BY MR. STEIN) And when you say

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1 that you were aware of the District Court  
2 Judge Roll's stance on Personal Bonds for  
3 aggravated offenses, what was that stance?

4 A. That he -- that Personal Bonds for  
5 aggravated offenses in his court were rare.

6 Q. What did Judge Roll do to  
7 communicate that preference to you?

8 A. He didn't do anything.

9 Q. So how did you learn of the judge's  
10 preference?

11 A. I knew that from conversations with  
12 prosecutors in his court on a prior  
13 occasion -- or prior occasions.

14 Q. Okay.

15 We're going to -- there we go.

16 We're just going to go back to that  
17 Exhibit 12 and I'm going to begin playing at  
18 31:10.

19 MR. NICHOLS: Just for the court  
20 reporter's benefit, are you -- are you  
21 expecting the court reporter to follow  
22 along and transcribe this?

23 MR. STEIN: I don't believe that  
24 the court reporter transcribes exhibits.

25 Is that correct, Ms. Reporter?